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No. 92-893

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY AND CONSOLIDATED GROUP, INC.,

Petitioners,

v.

RICHARD FUGARINO, JO MARIE FUGARINO, AND MARC A. FUGARINO,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE AMERICAN COUNCIL OF LIFE INSURANCE AND THE HEALTH INSURANCE ASSOCIATION OF AMERICA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE AN *AMICI CURIAE* BRIEF IN SUPPORT OF PETITIONERS

Pursuant to Supreme Court Rule 37.2, the American Council of Life Insurance ("ACLI") and the Health Insurance Association of America ("HIAA") move for leave to file an *amici curiae* brief in support of the petition for a writ of certiorari filed by Hartford Life and Accident Insurance Company and Consolidated Group, Inc. on November 23, 1992.

ACLI and HIAA obtained the consent of the petitioners to the filing of an *amici curiae* brief, as

indicated by the letter provided to the Clerk's office herewith. Respondents refused to grant consent. Therefore, pursuant to Rule 37.2, ACLI and HIAA need to obtain leave of the Court for filing the accompanying *amici curiae* brief in support of the petition for certiorari.

The Sixth Circuit ruling which is the subject of the petition[1] presents questions (i) whether self-employed individuals may be covered as "participants" or "beneficiaries" under the same ERISA[2] benefit plans as their employees, and (ii) whether such self-employed individuals or their family members may assert claims for benefits under ERISA's exclusive federal scheme (like other employees) or instead under different claims procedures specified by state law.

ACLI and HIAA seek to file a brief as *amici* because of the significant interest they and their members have in the decision below, which conflicts with rulings in other Circuits. ACLI[3] and HIAA[4] are large

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[1] *Fugarino v. Hartford Life and Accident Insurance Co.*, 969 F.2d 178 (6th Cir. 1992).

[2] Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 *et seq.*

[3] ACLI is a trade association representing 611 insurance companies throughout the United States. ACLI members sell approximately 95% of the life insurance policies and about 80% of the health insurance policies currently purchased in the United States from commercial insurers. The vast majority of those health insurance plans are provided to or through employee benefits plans as defined by ERISA.

[4] HIAA is a trade association organized to promote and protect the interests of its members, approximately 260 insurance companies that provide approximately 70% of the fully-insured commercial health insurance in the United States. The vast majority

trade associations, comprised of hundreds of insurers who furnish group health policies covering self-employed individuals, their families, and employees, through employee benefit plans as defined by ERISA. For many of the small firms owned and operated by self-employed individuals, insurance coverage may be available or affordable only through group arrangements offered by insurers like the members of ACLI and HIAA.

The logical consequence of the decision below is to prohibit coverage of self-employed individuals and their families under ERISA-qualified welfare benefit plans. If insurers such as ACLI and HIAA members are prohibited from including these owners in the same insurance policies as those covering their common-law employees, most of the small business owners who presently provide welfare benefit coverage to their employees (as well as themselves) would consider cancelling their coverage, thus potentially exacerbating an already severe crisis of the uninsured.

Furthermore, if the ruling below stands and a conflict in the Circuits persists, the insurer members of ACLI and HIAA will be forced at the minimum to establish separate claims procedures for self-employed individuals and employees receiving benefits under a single employee benefit plan. This would not only increase the insurers' costs, but would ultimately be passed through and significantly increase the cost of group coverage for small businesses owned by self-employed individuals. At a time of rapidly escalating

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of the health insurance policies provided by HIAA members are group insurance policies provided to or through employee benefit plans as defined by ERISA.

health insurance costs, ACLI and HIAA are anxious to avoid legal requirements that impose additional administrative costs.

The accompanying brief does not duplicate the arguments made by petitioners, but focuses instead on the industry-wide perspective of ACLI and HIAA. That perspective should be of assistance to the Court in gauging the significance and impact of the ruling below, and the need for Supreme Court review to clarify the law in this important area in light of the existing conflict in the Circuits.

Conclusion

For the foregoing reasons, the motion for leave to file the accompanying *amici curiae* brief should be granted.

Respectfully submitted,

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QUESTION PRESENTED

Whether self-employed individuals covered under the same ERISA plans as their employees are "participants" or "beneficiaries" in those plans, and therefore are precluded by ERISA's exclusive federal scheme from asserting state law claims for benefits under such plans.

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BRIEF *AMICI CURIAE* OF THE AMERICAN COUNCIL OF LIFE INSURANCE AND THE HEALTH INSURANCE ASSOCIATION OF AMERICA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

DESCRIPTION AND INTEREST OF *AMICI CURIAE*[1]

The American Council of Life Insurance ("ACLI") is a trade association representing 611 insurance com-

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[1] *Amici* obtained the consent of the petitioners to filing of this brief; evidence of such consent is on file with the Clerk of the Court pursuant to Rule 37 of this Court. Respondents refused

panies throughout the United States. ACLI members write approximately 95% of the life insurance policies and about 80% of the health insurance policies currently purchased in the United States from commercial insurers. The vast majority of those health insurance policies are provided to or through employee benefit plans as defined by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§1001 *et seq.*

The Health Insurance Association of America ("HIAA") is a trade association organized to promote and protect the interests of its members, approximately 260 insurance companies that provide approximately 70% of the fully-insured commercial health insurance in the United States. The vast majority of the health insurance policies provided by HIAA members are group insurance policies provided to or through employee benefit plans as defined by ERISA.

The decision below carries significant and adverse implications for the insurer members of ACLI and HIAA, and for the sole proprietorships and partnerships that sponsor insured plans.

First, the logical consequence of the decision is to prohibit coverage of self-employed individuals and their families under ERISA-qualified welfare benefit plans. If owners are thereby prohibited from eligibility under the same insurance policies as those covering the owners' common-law employees, many of the small business owners who presently provide welfare benefit coverage to their employees (as well as to them-

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to grant consent to the filing of this brief, and therefore *Amici* have filed herewith a motion for leave of the Court to file this brief.

selves) would be deprived of a major incentive to sponsor such plans, and would consider cancelling existing coverage, thus potentially exacerbating an already severe national crisis of the uninsured.

Secondly, the decision holds that claims processing for self-employed individuals under an ERISA-qualified welfare plan is not subject to ERISA's civil enforcement scheme. If this is so, insurers will be required to develop and apply separate claims procedures for claims of owners and for claims of employees under a single ERISA plan, thereby undermining ERISA's goal of uniformity, further increasing premiums, and resulting in reduced coverage of employees of small businesses.[2]

Given the importance of these issues to the administration of millions of insured welfare benefit plans, and given the inconsistency in the Circuits regarding interpretation of these issues, *Amici* urge this Court to grant a writ of certiorari to the petitioners.

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[2] *See, e.g.*, HIAA, "A Course in Group Life & Health Insurance" (Fourth Edition 1992), at 150:

> The insurer includes a sufficient amount in the premium rate to meet its anticipated expenses. Typically, the expense formula considers the economies of increasing group size [and] becomes a smaller percentage of premium as the size of the group increases.

Thus, it is the view of the *Amici* that if insurers are required to establish procedures to (1) classify self-employed individuals and their dependents separately under a single policy, and (2) apply state-by-state procedural requirements to their benefit claims that may vary from those required by ERISA, the administrative charges built into premiums for unincorporated businesses will inevitably increase.

SUMMARY OF ARGUMENT

This case involves a medical insurance plan purchased by a self-employed individual for his employees (including himself) and their families. Although the Court below determined that the plan was a welfare benefit plan covered by ERISA and found that he was eligible to receive benefits under the terms of the policy, nevertheless the court found that the self-employed individual was neither a participant nor a beneficiary of the plan, that he could not be covered under an ERISA plan because of ERISA's rule that plan assets may not "inure" to the benefit of an employer, and that claims by his dependents were therefore subject to state law jurisdiction rather than ERISA's civil enforcement scheme.

ERISA contemplates participation of self-employed individuals in certain plans maintained for their employees. Also, a self-employed individual and his or her dependents all satisfy ERISA's definition of "beneficiary" once it has been established that the plan covering them is an ERISA welfare benefit plan because it covers other employees. In administering such plans, insurers must be permitted to treat all beneficiaries of those plans equally regardless of whether they became beneficiaries through common-law employment or self-employment. Therefore, *Amici* urge the Court to grant the requested writ in order to clarify the rights and obligations of all insurers of and self-employed participants in ERISA welfare benefit plans.

The court below erred in construing ERISA's anti-inurement rule to prohibit participation of a self-employed individual in an insured ERISA welfare ben-

efit plan, because the court failed to recognize that when an employer purchases an insurance policy, the only "plan asset" is the policy itself, not the assets of the insurer backing up the policy. Therefore, when the insurer pays benefits to an individual covered by the insurance policy, the benefits are not plan assets, and the anti-inurement rule is not violated.

The Department of Labor, the Second Circuit, and the Ninth Circuit have ruled that self-employed individuals can be participants or beneficiaries in ERISA plans, and that their claims for benefits under those plans are governed exclusively by ERISA's civil enforcement scheme. The First Circuit has held that self-employed individuals cannot be covered under an uninsured ERISA plan, and the Sixth Circuit has now held below that claims by self-employed individuals cannot be brought under ERISA, even when an insured plan is covered by ERISA.

In light of the importance of the issues involved and the serious conflicts among the Circuits involving interpretation of ERISA as applied to plans covering self-employed individuals, the Court should grant the writ of certiorari to petitioners. By doing so, the Court will resolve an important issue under ERISA concerning the ability of insurers to provide benefits to self-employed individuals under insured ERISA welfare benefit plans.

STATEMENT OF THE CASE

Amici adopt the statement of the case as set forth in the petition for certiorari.

ARGUMENT

I. EXCLUSION OF SELF-EMPLOYED INDIVIDUALS FROM ERISA GROUP HEALTH PLANS WILL EXACERBATE THE CRISIS OF THE UNINSURED

Typically the purchasers of small group insurance policies are small businesses, and of these, many are operated as partnerships or sole proprietorships.[3] For these small businesses, insurance coverage may be available or affordable only through group arrangements.[4] The Advisory Council on Social Security and

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[3] One study estimated that:

> there are roughly 4.5 million to 5.5 million businesses in the United States with under 100 employees. Between 1980 and 1986 these firms accounted for over half of all new jobs in the U.S. economy. About half a million new businesses with under 500 employees are formed every year.

Jamison & Retzloff, "Marketing to U.S. Small Businesses in the '90s" (1989). *See also*, Newkirk, *Introduction to Group Insurance*, 3d Edition, at 15 (Dearborn) ("The term 'employees' (those eligible for coverage) may include proprietors and partners, as well as corporate owners who are active in their businesses."). *Amici* estimate that at least half of these small businesses are unincorporated.

[4] In 1990, 81 percent of public and private employees worked for employers that offered health insurance. However, only 27 percent of employers with fewer than 10 employees offered health insurance. Among the larger employers offering health insurance, there is no significant difference between incorporated and unincorporated businesses; over 92% of unincorporated businesses with 25 or more employees offer health benefits to their employees in plans that include the self-employed owners. "Critical Distinctions: How Firms That Offer Health Benefits Differ From Those That Do Not" (Health Insurance Association of America, 1990). Another study found that 40% of sole proprietorships with fewer than 100 employees provide group health

various states addressing the problem of the uninsured have all recognized that availability of affordable insurance coverage to small businesses depends on two things: (i) the ability of insurers to group small businesses into larger purchasing units for the purpose of spreading risk, and (ii) the ability of insurers to rely on ERISA preemption to override state laws that obstruct benefit uniformity, managed care programs, and uniform underwriting standards.[5] To enhance the availability of affordable insurance for self-employed individuals and their employees, insurers must be able to establish national uniformity in claims

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insurance to their employees (in plans that include the self-employed owners), with another 22% providing some other form of group welfare insurance benefit (such as life or disability coverage) in plans that include the self-employed owners. Jamison & Retzloff, *supra*, at 27.

[5] "Commitment to Change: Foundations for Reform," report of the Advisory Council on Social Security (Dec. 19, 1991), *summarized in* 19 BNA Pen. Rep. 4 (Jan. 6, 1992) (proposing model state laws for small business insurance, federal preemption of restrictive state laws, and tax law changes that allow self-employed individuals the same tax treatment for premium payments as common-law employees); BNA Pensions & Benefits Daily (April 7, 1992), report on Massachusetts group marketing program for small businesses; Statements by Senator John H. Chafee, reported by Federal News Service (May 12, 1992) ("40 percent of the nation's uninsured population work for small businesses. . . . Our bill makes health insurance more affordable by reforming . . . insurance market practices that limit small employers. . . . What our proposal does is to establish health insurance purchasing groups, which allow businesses with 100 or fewer employees to pool their employees to spread the risk. . . . [W]e encourage the purchase of health insurance by allowing individuals and the self-employed to deduct 100 percent of the cost of their health insurance premiums.").

processing for small group ERISA welfare plans (as a result of ERISA preemption).

Furthermore, if a self-employed individual cannot cover himself and his family under a plan covering his employees, he has little incentive to provide such benefits to his employees. In addition, the inability of a self-employed individual to be included in the same purchasing group as his employees may well make the insurance unavailable or unaffordable.[6]

II. AN INSURER MUST BE ABLE TO TREAT A SELF-EMPLOYED PERSON AS A PARTICIPANT OR BENEFICIARY UNDER AN ERISA PLAN

The Sixth Circuit found that a self-employed individual cannot pursue an ERISA claim under an ERISA plan because he cannot be a "participant" or a "beneficiary" as defined in ERISA.[7] *Fugarino v. Hartford Life & Accident Ins. Co.*, 969 F.2d 178, 185-86 (6th Cir. 1992). This holding is contrary to the

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[6] Historically, a group insurance policy has been available only to employee groups of ten or more. Watson, *The Elements of Group Insurance*, 55 (1968). Today, a few carriers provide policies to the under-ten employee market. *See also* "Critical Distinctions: How Firms That Offer Health Benefits Differ From Those That Do Not" (Health Insurance Association of America, 1990) at 8 ("[Tax] laws discourage unincorporated owners from providing coverage for themselves and probably for their employees as well").

[7] ERISA defines a "participant" as "any employee or former employee of an employer . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan . . . or whose beneficiaries may be eligible to receive any such benefit." ERISA §3(7), 29 U.S.C. §1002(7). ERISA defines a "beneficiary" as "a person designated . . . by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." ERISA §3(8), 29 U.S.C. §1002(8).

plain language of ERISA and to the interpretation of ERISA by the Department of Labor and by other courts. The Sixth Circuit relied on Regulations issued under ERISA providing that ERISA does not cover *a plan* where no common-law employees are participants covered by the plan. *Id.* at 185 (citing 29 C.F.R. §2510.3-3).[8] However, the Department of Labor has consistently opined that self-employed individuals and their families may be covered by ERISA benefit plans when they include common-law employees.[9]

Although this court recently addressed the definition of employment under ERISA, that decision did not address whether a self-employed individual can be covered as a "participant" by a plan that is subject to ERISA because it also covers his common-law employees. *Nationwide Mutual Insurance Co. v. Darden.*[10]

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[8] *See* Petition at 10-12, concerning inapplicability of the Regulations to this issue.

[9] *See, e.g.*, U.S. Department of Labor, Advisory Opinion 79-8A (Jan. 30, 1979) (available on LEXIS) (a multi-employer pension plan could cover a wife of a self-employed individual); Letter from Robert J. Doyle, Director of Regulations and Interpretations, U.S. Department of Labor to Ms. Susan Katz Hoffman, dated July 31, 1992 (App. E to Petitioner's Brief) (a plan covering common-law employees along with a self-employed individual is covered by ERISA, and "a plan's claims procedure applies to any participant or beneficiary covered under the employee benefit plan, including any participant or beneficiary described in [29 C.F.R.] §2510.3-3(c) [self-employed individual]").

[10] 112 S. Ct. 1344, 117 L.Ed. 2d 581 (1992) (this Court held that the term "employee" in ERISA's definition of "participant" is to be interpreted in its traditional common law sense, and therefore, a plan limited to independent contractors was not subject to ERISA).

In fact, ERISA expressly allows for inclusion of self-employed individuals as "participants" in ERISA-covered plans.[11] Similarly, the Internal Revenue Code of 1986 defines self-employed individuals as "employees" in the application of various benefit plan provisions.[12] Thus, a self-employed individual is considered "employed" by himself or by the partnership of which he is a partner (the employer) and can be covered under the plan as a participant pursuant to the terms of the plan and as contemplated by both the Code and ERISA.

Furthermore, any individual who is "designated" by an ERISA plan to receive benefits under the plan may be a "beneficiary" of the plan, even if that individual is not an "employee" under ERISA. A self-employed individual explicitly covered by the terms of an ERISA plan, and his covered dependents, are

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[11] For example, ERISA §403(b)(3)(A) exempts certain custodial accounts from ERISA's trust requirement, where "some or all of the *participants* [of a plan] are employees described in section 401(c)(1) of the Internal Revenue Code of 1986 [i.e., self-employed individuals]." 29 U.S.C. § 1103(b)(3)(A). ERISA §4022(b)(5) indicates that plans sponsored by an unincorporated trade or business are covered by the benefit guarantees of Title IV of ERISA, subject to certain *limitations* (not exclusions) of coverage for "substantial owners" of an unincorporated trade or business, and further indicates that benefits are limited to the extent a "*participant* in a plan . . . is covered by the plan as a substantial owner." 29 U.S.C. § 1322(b)(5)(emphasis added).

[12] *See, e.g.*, 26 U.S.C. §401(c) (tax-qualified retirement plans); §162(l) (medical care insurance); §72(m)(6) (life insurance); §129(e)(3) and (4) (dependent care plans); 26 C.F.R. §1.501(c)(9)-2(a)(1) (tax-exempt welfare trust fund "may include, for example, the proprietor of a business whose employees are members" provided that 90% of the membership are common-law employees).

"persons . . . who may become entitled to a benefit" under the plan, and therefore are beneficiaries of the plan under ERISA.[13] *Harper v. American Chambers Life Insurance Co.*, 898 F.2d 1432, 1434 (9th Cir. 1990) (citing the "plain language" of ERISA).

Other Circuits have held that self-employed individuals may be "participants" or "beneficiaries" in ERISA plans and that their benefit claims are subject to ERISA's claims procedures. *Harper v. American Chambers Life Insurance Co., supra*; *Schwartz v. Gordon*, 761 F.2d 864, 869 (2d Cir. 1985). No Circuit other than the Sixth Circuit, below, has held that a self-employed individual covered by an insured ERISA plan is neither a participant nor a beneficiary in that plan.

The outcome of this disagreement between the Circuits is of crucial significance to the interpretation and application of ERISA by members of the *Amici*. If self-employed individuals are not "participants" in an ERISA-covered benefit plan, the claims procedure requirements of ERISA §503 (29 U.S.C. § 1133) do not apply to those individuals, and insurers must establish separate claims processing units for them that must comply with applicable state law requirements.[14]

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[13] The "beneficiary" definition was not addressed in *Darden* because all of the plan's participants were independent contractors, and a plan is not subject to ERISA if it has no employees.

[14] For example, ERISA plans must satisfy certain maximum time periods for processing of initial claims, for submission of appeals of denied claims, and for review of denied claims. State law requirements may be different. 29 C.F.R. §2560.503-1. Similarly, many state laws set forth notification requirements for termination of coverage under group health and life insurance plans that may be different from those set forth in ERISA. *See*,

Insurers must prepare annual report filings under ERISA by identifying those covered individuals who are "participants." The Pension Benefit Guaranty Corporation has been providing guaranteed benefits to self-employed individuals and those plan sponsors are paying premiums for such guarantees. Therefore, this Court should grant the writ of certiorari for the purpose of clarifying the rights and obligations of millions of unincorporated ERISA plan sponsors.

III. COVERAGE OF A SELF-EMPLOYED INDIVIDUAL UNDER AN ERISA PLAN DOES NOT CONSTITUTE UNLAWFUL INUREMENT

The court below relied upon *Kwatcher v. Massachusetts Service Employees Pension Fund*, 879 F.2d 957 (1st Cir. 1989), for the proposition that a self-employed individual may not be a participant in an ERISA plan because it would violate the "anti-inurement" provision of ERISA Section 403(c)(1), 29 U.S.C. §1103(c)(1).[15] *Fugarino*, 969 F.2d at 186. By applying this rule to an insured plan, the Sixth Circuit created severe legal and administrative concerns for insurers providing benefits to self-employed individuals under insured ERISA welfare benefit plans.[16]

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e.g., *Howard v. Gleason Corp.*, 901 F.2d 1154 (2d Cir. 1990) (notice requirement in state law is preempted because of different ERISA notice requirements that apply nationwide).

[15] The ruling in *Kwatcher*, now adopted by the Sixth Circuit below, is directly contradicted by the rulings in *Giardono v. Jones*, 867 F.2d 409 (7th Cir. 1989), and *Peckham v. Board of Trustees*, 719 F.2d 1063, *modified*, 724 F.2d 100 (10th Cir. 1983), and by the Department of Labor opinion letters cited at note 9, *supra*.

[16] The *Kwatcher* decision did not directly affect insurers, because it dealt with an uninsured multiemployer pension trust,

If the anti-inurement rule is violated by a plan fiduciary, the fiduciary may be sued by any plan participant on behalf of the plan for assets wrongfully transferred to the employer. If the payment of insured benefits to a self-employed individual or his family members under an insured plan is a violation of the anti-inurement rule, then insurers must exclude self-employed individuals (this presupposes that payment of such insurance benefits from the general assets of the insurer could constitute payment of plan assets to the employer).[17] However, the Sixth Circuit clearly did not intend to imply that the insurer was prohibited from paying benefits to Mr. Fugarino and his family under his insurance policy.

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and the outcome was consistent with decisions under the exclusive benefit provisions of the Labor Management Relations Act (even though the ERISA rationale was erroneous). The LMRA definition of "employees" is narrower than the definition in ERISA. *Chase v. Trustees of Western Conference of Teamsters Pension Fund*, 753 F.2d 744, 750 (9th Cir. 1985); *Martin v. Hamill*, 608 F.2d 725, 729 (7th Cir. 1979); *Aitken v. IP&GCU Employer Retirement Fund*, 604 F.2d 1261 (9th Cir. 1979).

[17] Since the enactment of ERISA, the Department of Labor has consistently opined that "if an insurance company issues a contract or policy of insurance to a plan and places the consideration for such contract or policy in its general asset account, the assets in such account shall not be considered to be plan assets." 29 C.F.R. §2509.75-2(b) (codifying an interpretive bulletin first issued on February 6, 1975). *Accord, Mack Boring and Parts v. Meeker Sharkey Moffitt*, 930 F.2d 267 (3d Cir. 1991), and cases cited therein. Those cases that have held to the contrary have limited their holdings to situations where the insurer's return on its assets directly affects the return realized by the plan. *Harris Trust & Savings Bank v. John Hancock Mutual Life Ins. Co.*, 970 F.2d 1138 (2d Cir. 1992); *Peoria Union Stock Yards Co. Retirement Plan v. Penn Mutual Life Ins. Co.*, 698 F.2d 320 (7th Cir. 1983).

The error below arose from the court's characterization of insurance benefits as "plan assets." The court failed to recognize that when an employer purchases an insurance policy, the only "plan asset" is the policy itself, not the assets of the insurer backing up the policy. Therefore, when the insurer pays benefits to an individual covered by the insurance policy, the benefits are not plan assets, and the anti-inurement rule is not violated.

The logical consequence of the decision below is that insurers could violate the fiduciary liability provisions of ERISA by providing insurance benefits to self-employed individuals under the same policies of insurance as those covering common law employees. If the insurers could no longer do so, the structure and pricing of the small group insurance market would be severely disrupted.

Since many insurers develop their claims administration and policy design on a national basis, it would be difficult, and certainly costly to consumers, to maintain separate structures for unincorporated employers within the First and Sixth Circuits, and unified structures elsewhere. Therefore, *Amici* urge the Court to grant the requested writ of certiorari to resolve this conflict and to clarify an important issue under ERISA as it applies to coverage of self-employed persons under group insurance arrangements.

CONCLUSION

ACLI and HIAA respectfully request the Court to grant a writ of certiorari to petitioners, for the reasons stated herein.

Respectfully submitted,

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